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STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

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Honorable Randall I. Hillman  
Executive Director, Office of Prosecution Services  
515 South Perry Street  
Montgomery, Alabama 36130-4110

Supernumerary Status – District  
Attorneys – Compensation –  
Restitution Recovery Fund – Legal  
Services – Contracts

A supernumerary district attorney may enter into a contract to provide legal services as part of a statewide restitution recovery program and receive compensation for his or her services.

Dear Mr. Hillman:

This opinion of the Attorney General is issued in response to your request.

QUESTION

May a supernumerary district attorney be paid \$100 per day pursuant to a contract to provide legal services in a statewide restitution recovery program?

FACTS AND ANALYSIS

According to your request and additional information provided to this Office, the Office of Prosecution Services (“OPS”), the Administrative Office of Courts (“AOC”), and various district attorneys’ offices are contemplating a partnership for the establishment of a statewide restitution recovery program called the Restitution Recovery

Initiative for Victims in Alabama (“RRIVA”). The goal of RRIVA is to supplement and assist the local district attorney’s restitution recovery units in the recovery of outstanding restitution, fines, and court costs by increasing the number of defendants contacted and placed on payment plans. Under the contemplated arrangement, retired judges and supernumerary district attorneys will be tasked with handling dockets involving the relevant cases. Pursuant to section 12-1-14 of the Code of Alabama, the retired judges will be compensated for his or her service, and you ask whether the supernumerary district attorneys providing services may also be compensated.

This Office has previously determined that “a supernumerary district attorney may contract with an active district attorney to provide assistance in performing *duties that are not mandated of the district attorney’s office.*” Opinion to Honorable Douglas Albert Valeska, District Attorney, Henry County, dated June 20, 2005, A.G. No. 2005-151 (emphasis added). Additionally, this Office has determined that because child support enforcement “is not a mandated duty of a district attorney or an assistant attorney general, a supernumerary district attorney may not be called to active duty for that purpose.” Opinion to Honorable Thomas W. Sorrells, Executive Director, Alabama District Attorneys Association, dated September 30, 1996, A.G. No. 96-00329. Rather, a supernumerary district attorney may contract with the district attorney to provide such services. *Id.* at 3.

The authority of a district attorney to establish a restitution recovery program is found in section 12-17-225.1 of the Code. This section states that “[a]ny law to the contrary notwithstanding, each district attorney *may establish* a special division designated the ‘restitution recovery division’ . . . .” ALA. CODE § 12-17-225.1 (2012) (emphasis added).

“Ordinarily, the use of the word ‘may’ indicates a discretionary or permissive act, rather than a mandatory act.” *Ex parte Mobile Cnty. Bd. of Sch. Comm’rs*, 61 So. 3d 292, 294 (Ala. Civ. App. 2010). “May” is permissive and not mandatory. Opinion to Honorable Bob Riley, Governor, State of Alabama, dated December 18, 2003, A.G. No. 2004-042. The Alabama Supreme Court has “long recognized that words such as ‘may’ . . . denote permissive alternatives.” *Bowdoin Square, L.L.C. v. Winn-Dixie Montgomery, Inc.*, 873 So. 2d 1091, 1099 (Ala. 2003). Thus, the establishment of a restitution recovery division is not a mandatory duty imposed upon the district attorney.

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Based upon the foregoing, it is the opinion of this Office that, because restitution recovery is not a mandatory duty of the district attorney, a supernumerary district attorney may enter into a contract to provide legal services as part of a statewide restitution recovery program. He or she may receive compensation pursuant to that contract for his or her services therein. As we noted in the *Valeska* and *Sorrells* opinions, however, the contract should provide for termination or suspension of the contract in the event the supernumerary district attorney should be called into active service.


#### CONCLUSION

A supernumerary district attorney may enter into a contract to provide legal services as part of a statewide restitution recovery program and receive compensation for his or her services.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Ben Baxley of my staff.

Sincerely,

LUTHER STRANGE  
Attorney General  
By:

A handwritten signature in cursive script, reading "Brenda F. Smith".

BRENDA F. SMITH  
Chief, Opinions Division

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